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Attorneys for Federal Defendants WILLIAM ARDREN AND US FISH & WILDLIFE
SERVICES

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

SAFA ABDULHAMID AND
AFAF STOWELL,

Plaintiffs,

v.

WILLIAM ARDREN AND
US FISH & WILDLIFE SERVICES,
and DOES 1 through 10,

Defendants.

No. CV 08-1737 PVT

FEDERAL DEFENDANTS WILLIAM
ARDREN AND US FISH & WILDLIFE
SERVICES' ANSWER TO COMPLAINT

Federal Defendants William Ardren and US Fish & Wildlife Services ("Federal
Defendants") hereby answer the Complaint filed by Plaintiffs Safa Abdulhamid and Afaf Stowell
("Plaintiffs") as follows:

1. In response to the allegations in paragraph 1, Federal Defendants aver that the
United States is the proper defendant. In response to the remaining allegations in paragraph 1,
Federal Defendants lack sufficient information to form a belief as to the truth or falsity of the
allegations in paragraph 1 and, on that basis, deny the allegations in paragraph 1.

1 2. In response to the allegations in paragraph 2, Federal Defendants admit that they
2 have received a four-page pleading. To the extent not expressly admitted, Federal Defendants
3 deny the allegations in paragraph 2.

4 3. In response to the allegations in paragraph 3, Federal Defendants lack sufficient
5 information to form a belief as to the truth or falsity of the allegations in paragraph 3 and, on that
6 basis, deny the allegations in paragraph 3.

7 4. In response to the allegations in paragraph 4, Federal Defendants lack sufficient
8 information to form a belief as to the truth or falsity of the allegations in paragraph 4 and, on that
9 basis, deny the allegations in paragraph 4.

10 5. In response to the allegations in paragraph 5, Federal Defendants aver that
11 William Ardren and the U.S. Fish and Wildlife Service are not proper defendants.

12 6. In response to the allegations in paragraph 6, Federal Defendants aver that
13 allegations against "Doe defendants" cannot be maintained in an action under the Federal Tort
14 Claims Act. In response to the remaining allegations in paragraph 6, Federal Defendants lack
15 sufficient information to form a belief as to the truth or falsity of the allegations in paragraph 6
16 and, on that basis, deny the allegations in paragraph 6.

17 7. In response to the allegations in paragraph 7, Federal Defendants aver that
18 Plaintiffs have not responded to paragraph 7 and deny any allegations implied by the non
19 response.

20 8. In response to the allegations in paragraph 8, Federal Defendants deny the
21 allegations in paragraph 8.

22 9. In response to the allegations in paragraph 9, Federal Defendants aver that
23 Plaintiffs have not responded to paragraph 9 and deny any allegations implied by the non
24 response.

25 10. In response to the allegations in paragraph 10, the allegations in paragraph 10 are
26 a statement of Plaintiffs' causes of action to which no response is required. To the extent a
27 response is required, Federal Defendants deny the allegations.

1 11. In response to the allegations in paragraph 11, the allegations in paragraph 11 are
2 a statement of Plaintiffs' case to which no response is required. To the extent a response is
3 required, Federal Defendants deny the allegations.

4 12. In response to the allegations in paragraph 12, Federal Defendants aver that the
5 boilerplate text in paragraph 12 is not applicable in this case.

6 13. In response to the allegations in paragraph 13, Federal Defendants deny the
7 allegations in paragraph 13.

8 14. In response to the allegations in paragraph 14, the allegations in paragraph 14 are
9 a statement of Plaintiffs' case to which no response is required. To the extent a response is
10 required, Federal Defendants deny the allegations.

11 15. In response to the allegations in paragraph 15, Federal Defendants lack sufficient
12 information to form a belief as to the truth or falsity of the allegations in paragraph 15 and, on
13 that basis, deny the allegations in paragraph 15.

14 16. In response to the allegations in paragraph MV-1, Federal Defendants deny the
15 allegations in paragraph MV-1.

16 17. In response to the allegations in paragraph MV-2 and all subparts thereof, Federal
17 Defendants answer as follows:

18 a. In response to subpart a, Federal Defendants aver that William Ardren is
19 not a proper defendant in this action. Federal Defendants further aver that allegations against
20 "Doe defendants" cannot be maintained in an action under the Federal Tort Claims Act.

21 b. In response to subpart b, Federal Defendants aver that the U.S. Fish and
22 Wildlife Service is not a proper defendant in this action. Federal Defendants further aver that
23 allegations against "Doe defendants" cannot be maintained in an action under the Federal Tort
24 Claims Act.

25 c. In response to subpart c, Federal Defendants aver that the boilerplate text
26 in paragraph MV-2c is not applicable in this case.

27 d. In response to subpart d, Federal Defendants aver that the U.S. Fish and
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Wildlife Service is not a proper defendant in this action. Federal Defendants further aver that allegations against “Doe defendants” cannot be maintained in an action under the Federal Tort Claims Act.

e. In response to subpart e, Federal Defendants admit that William Ardren was acting within the scope of his employment. Federal Defendants aver that William Ardren is not a proper defendant in this action. Federal Defendants further aver that allegations against “Doe defendants” cannot be maintained in an action under the Federal Tort Claims Act.

f. In response to subpart f, Federal Defendants aver that there is no Attachment MV-2f. Federal Defendants further aver that allegations against “Doe defendants” cannot be maintained in an action under the Federal Tort Claims Act.

18. Federal Defendants deny any and all allegations not specifically answered above.

FIRST AFFIRMATIVE DEFENSE

The complaint fails to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

The Court lacks subject matter jurisdiction over Plaintiffs’ complaint.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs’ damages, if any, have been caused or exacerbated by the failure of Plaintiffs to mitigate damages.

FOURTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. 2675(b), Plaintiffs’ recovery in this action, if any, is limited to the amount of the claim that Plaintiffs presented in their administrative tort claim.

FIFTH AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2674, Federal Defendants are not liable for interest prior to judgment or for punitive damages.

Wherefore, Federal Defendants request the following:

1. That Plaintiffs’ complaint be dismissed with costs of suit awarded to Federal Defendants;
2. That Plaintiffs take nothing in this action; and

3. That this Court grant such other and further relief as it may deem appropriate.

Respectfully submitted,

JOSEPH P. RUSSONIELLO
United States Attorney

Dated: April 3, 2008

/s/
NEILL T. TSENG
Assistant United States Attorney